

# EXHIBIT 58

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In Re:  
Bair Hugger Forced Air Warming  
Products Liability Litigation

This Document Relates To:  
All Actions MDL No. 15-2666 (JNE/FLM)

DEPOSITION OF JOHN P. ROCK  
VOLUME I, PAGES 1 - 291  
NOVEMBER 4, 2016

(The following is the deposition of JOHN P. ROCK, taken pursuant to Notice of Taking Deposition, via videotape, at the offices of Ciresi Conlin L.L.P., 225 South 6th Street, Suite 4600, Minneapolis, Minnesota, commencing at approximately 9:14 o'clock a.m., November 4, 2016.)

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1 APPEARANCES:  
2 On Behalf of the Plaintiffs:  
3 Michael V. Ciresi and Michael A. Sacchet  
4 CIRESI CONLIN L.L.P.  
5 225 South 6th Street, Suite 4600  
6 Minneapolis, Minnesota 55402  
7 Genevieve M. Zimmerman  
8 MESHBER & SPENCE, LTD.  
9 1616 Park Avenue  
10 Minneapolis, Minnesota 55404  
11 Gabriel Assaad  
12 KENNEDY HODGES  
13 4409 Montrose Boulevard, Suite 200  
14 Houston, Texas 77006  
15 On Behalf of Defendants:  
16 William A. Brewer III  
17 BREWER ATTORNEYS & COUNSELORS  
18 1717 Main Street, Suite 5900  
19 Dallas, Texas 75201  
20 Bridget M. Ahmann  
21 FAEGRE BAKER DANIELS  
22 2200 Wells Fargo Center  
23 90 South Seventh Street  
24 Minneapolis, Minnesota 55402-3901  
25 ALSO APPEARING:  
Ronald M. Huber, Videographer

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EXHIBITS DESCRIPTION PAGE MARKED

Ex 28 E-mail with attachment,  
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31 E-mail string, 3MBH00053497-8 137

32 Filtration Topics, 3MBH00031248 146

33 Ducky Preliminary Concepts,  
check-in/5.13.2009,  
3MBH00031134-58 171

34 Letter dated October 23, 2008,  
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3MBH00007763-72 184

35 E-mail string, 3MBH00050729-30 208

36 War Games v2, 3MBH00139635 227

37 E-mail string, 3MBH00054315-22 230

38 E-mail string, 3MBH0024678-9 232

39 E-mail string, 3MBH00002619-20 239

40 Arizant forced-air warming and  
SSI prevention: Talking points  
for sales, June 2010 HG rev. 1,  
3MBH00529215-6 250

41 E-mail string, 3MBH01034121-2 253

42 E-mail string, 3MBH00033850-1 260

43 E-mail string, 3MBH00577468-70 265

44 E-mail string, 3MBH0051736-8 282

45 E-mail, 3MBH00552833 284

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1 PROCEEDINGS  
 2 (Witness sworn.)  
 3 JOHN P. ROCK  
 4 called as a witness, being first duly sworn,  
 5 was examined and testified as follows:  
 6 ADVERSE EXAMINATION  
 7 BY MR. CIRESI:  
 8 Q. Can you state your full name and the  
 9 spelling of your last name for the record.  
 10 A. John Rock, R-o-c-k.  
 11 Q. Mr. Rock, my name is Mike Ciresi and I'm one  
 12 of the lawyers representing the plaintiffs in this  
 13 matter. You have had your deposition taken before,  
 14 sir?  
 15 A. Yes, I have.  
 16 Q. Okay. So you understand the process?  
 17 A. Yes, I do.  
 18 Q. I'll be asking you questions under oath and  
 19 you -- I'll be asking you questions and you will be  
 20 responding under oath. Do you understand that?  
 21 A. Yes, I do.  
 22 Q. Okay. If at any time during the questioning  
 23 you do not hear or understand a question that I ask  
 24 you, please tell me. Is that agreeable?  
 25 A. Yes, it is.

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1 Q. Okay. If you do not so advise me, I'm going  
 2 to assume that you have both heard and understood the  
 3 question. Is that also agreeable?  
 4 A. Yes.  
 5 Q. Okay. Are you on any medications of any  
 6 kind?  
 7 A. No.  
 8 Q. Okay. Is there any other impairment of your  
 9 ability to testify?  
 10 A. Actually, I have had medications. I've had  
 11 Xanax over the last couple of months -- well --  
 12 Q. Okay.  
 13 A. -- weeks, you know, here and there, but --  
 14 Q. You're not on any medication that would  
 15 affect your ability to testify.  
 16 A. No.  
 17 Q. How many times have you had your deposition  
 18 taken before, sir?  
 19 A. I believe it's four.  
 20 Q. Okay.  
 21 A. Did -- did you say deposition in -- in this  
 22 case or did -- I'm sorry.  
 23 Q. Depositions period.  
 24 A. Oh, yeah. Just four.  
 25 Q. Four?

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1 A. I think it's four.  
 2 Q. And how many were involving the Bair Hugger  
 3 device?  
 4 A. Three.  
 5 I'm sorry. By "the Bair Hugger device," is  
 6 that the system or is that just the warming unit?  
 7 What -- what do you mean by "the Bair Hugger device?"  
 8 Q. The entire device, any part of it.  
 9 A. Three that would be.  
 10 Q. Okay. Do you know --  
 11 Do you recall what the other deposition was  
 12 in?  
 13 A. I had a patent case that was tried in the  
 14 '90s, I believe mid-90's, the Walton case and the  
 15 Johnson case.  
 16 Q. Okay. Can you give us your educational  
 17 background, please, commencing with college.  
 18 A. I went to Creighton University in Omaha,  
 19 Nebraska, graduated with a bachelor of arts.  
 20 Q. When did you graduate from Creighton?  
 21 A. In 1980.  
 22 Q. Upon your graduation from Creighton what did  
 23 you do?  
 24 A. I went to work in Glacier National Park in  
 25 Montana.

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1 Q. What was your job in Glacier National Park?  
 2 A. I worked first in the -- kind of the gear  
 3 shop, and then --  
 4 Q. In the what shop?  
 5 A. Gear shop, so hiking gear and things like  
 6 that. And then I worked in the finance area of the  
 7 lodge at St. -- I think it's St. Mary's on the east  
 8 side of Glacier.  
 9 Q. What were your duties and responsibilities  
 10 in the gear shop?  
 11 A. Serve customers that came in, tourists that  
 12 were coming through.  
 13 Q. Wanted to rent gear?  
 14 A. Retail -- retail sales pretty much, if I  
 15 remember.  
 16 Q. So you were a salesperson in the retail --  
 17 in the gear shop.  
 18 A. For a very short period, yes.  
 19 Q. How long?  
 20 A. That's -- that's my recollection. That was  
 21 a long time ago.  
 22 Just -- I don't -- I don't really recall.  
 23 It couldn't -- couldn't have been more than a couple  
 24 of weeks.  
 25 Q. Okay. And then you said you worked in the

2 (Pages 5 to 8)

<p style="text-align: right;">Page 217</p> <p>1 Q. Okay. Which ones?</p> <p>2 A. I read an article in the New England Journal</p> <p>3 where an 80-some-year-old woman had an infection in</p> <p>4 her leg that they tied to a break when it -- when she</p> <p>5 was in her -- I think below 10 years old or in her</p> <p>6 teens.</p> <p>7 Q. Okay. Now do you know of any studies in the</p> <p>8 medical journals dealing with the Bair Hugger and</p> <p>9 infection that dealt with infections manifesting</p> <p>10 themselves beyond one week post operation?</p> <p>11 A. I don't remember exactly what the colorectal</p> <p>12 study follow-up period was, if that was --</p> <p>13 Q. Orthopedic hip or knee joints.</p> <p>14 A. I don't.</p> <p>15 Q. You can't point to one; can you?</p> <p>16 A. I -- I just don't recall.</p> <p>17 Q. And you would agree that as of April of 2010</p> <p>18 the company could neither prove nor disprove the fact</p> <p>19 that the Bair Hugger causes surgical-site infections,</p> <p>20 could neither prove nor disprove the fact.</p> <p>21 A. I think that's an accurate statement.</p> <p>22 Q. And did you ever -- and by "you" I mean the</p> <p>23 company -- ever state publicly or in your warnings</p> <p>24 accompanying the device that the company could not</p> <p>25 disprove that the Bair Hugger causes surgical-site</p>	<p style="text-align: right;">Page 219</p> <p>1 it said.</p> <p>2 Q. The campaign was that you do not believe the</p> <p>3 Bair Hugger causes any surgical-site infections; isn't</p> <p>4 that right?</p> <p>5 A. We do not believe that.</p> <p>6 Q. And do --</p> <p>7 Yet you have no proof one way or the other.</p> <p>8 A. Oh, we -- I don't know if --</p> <p>9 We have no proof they do.</p> <p>10 Q. And you have no proof that they don't.</p> <p>11 A. Correct.</p> <p>12 Q. So you don't know one way or the other, and</p> <p>13 yet you tell people that they don't.</p> <p>14 A. We don't believe they do.</p> <p>15 Q. And you have no --</p> <p>16 A. And the science -- and the science that we</p> <p>17 have seems to indicate otherwise. And not just</p> <p>18 science but --</p> <p>19 Q. What science?</p> <p>20 A. Well all the articles that have been</p> <p>21 examined by us and all the outside agencies --</p> <p>22 Q. Excuse me.</p> <p>23 A. -- that have looked at this and at -- by the</p> <p>24 FDA and everybody else that has looked at this issue.</p> <p>25 Q. The FDA has said there should be no device</p>
<p style="text-align: right;">Page 218</p> <p>1 infections?</p> <p>2 A. I don't believe that was a warning in our</p> <p>3 materials.</p> <p>4 Q. Did anyone ever suggest to you -- and I'm</p> <p>5 excluding legal advice -- that you should warn with</p> <p>6 the operating instructions that the company has no way</p> <p>7 of knowing whether its device does or does not cause</p> <p>8 surgical-site infections?</p> <p>9 A. Not to my recollection.</p> <p>10 Q. So no one internally ever said, "We don't</p> <p>11 know whether our device does or does not cause</p> <p>12 infections. Shouldn't we say that?"</p> <p>13 A. Not to my recollection. That would just</p> <p>14 confuse customers, but --</p> <p>15 Q. It would just confuse them?</p> <p>16 A. I do.</p> <p>17 Q. It wouldn't give them the opportunity to say</p> <p>18 maybe they should use an alternative way of warming?</p> <p>19 A. They already have that opportunity.</p> <p>20 Q. But you have put out a campaign that it</p> <p>21 doesn't cause infections; isn't that right?</p> <p>22 A. That there's no proof that there was ever an</p> <p>23 infection I believe was the --</p> <p>24 Q. No.</p> <p>25 A. -- campaign, but I don't recall exactly what</p>	<p style="text-align: right;">Page 220</p> <p>1 that blows air in the operating room; hasn't it?</p> <p>2 A. I am not aware of that.</p> <p>3 Q. You're not?</p> <p>4 A. I have not seen that.</p> <p>5 Q. Well would that make a difference to you?</p> <p>6 A. I don't -- I would ask --</p> <p>7 I would put that in the scientists' hands.</p> <p>8 Q. So if the FDA said, "There should be no</p> <p>9 device that blows air in the operating room," you'd</p> <p>10 say, "Well, we won't follow the FDA in that regard."</p> <p>11 Is that right?</p> <p>12 A. I would --</p> <p>13 MS. AHMANN: Lack of foundation.</p> <p>14 A. I would --</p> <p>15 I assume if the FDA told 3 -- well I'm not</p> <p>16 3M any more, but if they told my company that we can't</p> <p>17 market a device because it blows air, that we would</p> <p>18 not market that device.</p> <p>19 Q. If the FDA said that nothing that blows air</p> <p>20 should be in an operating room, if possible, would</p> <p>21 that make a difference to you?</p> <p>22 MR. BREWER: Pardon me. Objection,</p> <p>23 foundation, assumes facts not in evidence.</p> <p>24 MR. CIRESI: You may answer.</p> <p>25 MR. BREWER: Improper hypothetical.</p>